

C/M/S/ Cameron McKenna



# Capital markets

Coverage of this month's capital markets law

January 2007

## Looking forward

### Developments scheduled for the month ahead

Date	Item	Significance
Various to 2008	<b>Companies Act 2006</b>	<b>The Act will be implemented at different (as yet unpublished) times between April 2007 and October 2008.</b>
20 February 2007	<b>Dormant Bank Accounts</b>	<b>Treasury ask for response to consultation paper.</b>
From April 2007	<b>Consumer Credit Act 2006</b>	<b>“Unfair relationships” test will be introduced, to allow consumers to challenge unfair treatment by lenders.</b>
May 2007	<b>EU mortgage credit harmonisation</b>	<b>EU action to make the market for mortgages more efficient and competitive. Mortgage Funding Expert Group, formed to identify barriers to cross-border mortgage activity and propose solutions, will publish findings.</b>
1 July 2007	<b>UCP 600</b>	<b>Revised rules on documentary credits are expected to be written into most letters of credit.</b>
1 November 2007	<b>Markets in Financial Instruments Directive</b>	<b>MiFID will be implemented on this date.</b>

## Law Now

### Articles on our free information website this month

Date	Item	Significance
2 January 2007	<b>Guarantees: the risks of unclear documents and "Entire Agreement" clauses</b>	<b>The court decided an assurance by a director that he would pay the fees the company owed was not a guarantee of those fees, despite a letter signed at the same time that included a term that the directors would be liable if the company failed to pay.</b>
8 January 2007	<b>Companies' details on websites and in electronic communications</b>	<b>From 1 January 2007, the statutory requirement for companies to state particulars on stationery has been extended to websites and electronic communications.</b>
12 January 2007	<b>Financial Collateral Arrangements - European Commission report</b>	<b>The Directive on financial collateral arrangements might be extended to include credit claims as eligible collateral.</b>
23 January 2007	<b>Court does not validate payments made from frozen bank account</b>	<b>Reminds banks of need to spot winding-up petitions against their customers.</b>
30 January 2007	<b>Secured creditor can intervene in charged property before enforcement</b>	<b>The first time the Court of Appeal has analysed the rights of parties to a securitisation. And a reminder of how extensive a secured creditor's rights are in charged property, even before the right to enforce arises.</b>

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# Banking

## ARTICLES

### Bonds

ICMA Regulatory Policy Newsletter

*Issue No. 4: January 2007*

#### Investor Protection in the International Bond Markets

In the international bond markets, certain assumptions about investor protection are shared between issuers, investors and underwriters: high standards of disclosure are essential to the functioning of the market; bond documentation should be clear and unambiguous; and the market itself is best placed to take any necessary action. The market does need to address a number of questions: the equalisation of information that issuers make available to their bondholders and bank lenders; conforming bond documentation across different currency sectors; and change of control clauses. ICMA has taken a number of initiatives to help.

#### Guidance on Denominations of €50,000 and Integral Multiples of €1,000

ICMA and ICMSA have published a set of guidance notes on the treatment of debt securities with a denomination which is the sum of €50,000 and an integral multiple of another lesser amount, usually €1,000.

#### Implementation of the Transparency Directive

The Transparency Directive is due to be implemented in January 2007.

Implementation across the EEA is expected to be staggered and uneven, and there are disagreements about interpretation of some of its provisions. This is likely to cause difficulties to firms involved in cross-border activities. ICMA is working to ensure that the Directive is implemented across the EEA as soon as possible with the minimum of national divergences.

#### MiFID Implementation

ICMA has continued to be heavily involved in the work of MiFID Connect in the UK, and is holding a series of seminars on MiFID implementation for ICMA members in other countries. Key implementation issues which are not yet settled include best execution and transaction reporting.

#### Bond Market Transparency

In its Feedback statement, the European Commission said that it expects to engage in constructive dialogue with all stakeholders over the coming months to determine whether self-regulatory measures can provide a viable low-cost means of addressing the issues raised. The Commission has also asked CESR and ESME for technical advice by the end of June 2007 on cash bonds.

#### Clearing and Settlement

ICMA has emphasised that efficient monitoring and enforcement is key to the

success of the Code of conduct for clearing and settlement, and has argued for the inclusion of users in the process. User involvement is also important in the governance of the proposed TARGET2 Securities project.

## Derivatives

### Keep on building

The European ABS market's rapid expansion has long been underpinned by strong and growing RMBS issuance. However, with Basel II about to take effect and concerns about a decline in performance, there was a feeling that 2006 may see RMBS issuance levelling out. In fact, new market entrants have driven massive growth, but is it sustainable?

(A. Mattinson: *ISR*, 1.07, 32) 07.03.024

### Liquidity rising

The European CMBS market is expected, for the first time, to top €20bn more than the most conservative volume calculation for the previous year. German and pan-European deals have fuelled much of this growth, accompanied by an increasing sophistication in structuring techniques. But, as the author explains, aggressive property valuations may mean trouble for the sector in years to come.

(C. Smith: *ISR*, 1.07, 37) 07.03.025

### On the fast traxx

Many players do not want to discuss the concerns surrounding the massive growth in credit derivatives or the increasing leverage within the sector, when further standardisation and product development lead to the opportunities seen in this market today. But how much larger can CDS markets get – the corporate segment

is already said to be 10 times the size of the underlying bond market – before something derails?

(R. Horsewood: *ISR*, 1.07, 51) 07.03.026

# TECHNICAL

## Derivatives

### ISDA possible new projects in 2007

Proposals for documentation projects in 2007:

- (a) Templates for commodity index confirmations plus additional provisions re Market Disruption Events, Disruption Fallbacks and Index Adjustments for index transactions
- (b) Documentation for swaps and options on commodity baskets
- (c) Templates for physical crude oil transactions (possibly in co-operation with LEAP)
- (d) Language to calculate weather exposure for the purposes of collateralizing weather derivatives transactions under an ISDA CSA (according to the so-called Burn Methodology, as developed by WRMA)
- (e) A User's Guide for weather transactions (as developed by WRMA)
- (f) Amendments to the ISDA Energy Bridge to provide for cross-collateralization
- (g) Additional transaction types to be covered by ISDA standard confirms:
  - (i) Fixed/floating swap: caps, floors, extendibles and cancellable extendibles
  - (ii) Basis swaps: rounding, conversion of units, FX conversion of CRP
  - (iii) Spreads: calls, puts, cracks
- (h) Additional provisions re Calculation Agent

### ISDA: Revised Dispute Resolution Language

#### Working Group

ISDA report: "As agreed at the January 9 Dispute Resolution Language Working Group meeting, product specific working groups will be established to consider approval of standard dispute resolution language for each of equities, credit derivatives, interest rates and commodities product areas. These product specific working groups are designed to elicit views on whether there are specific product concerns that would arise in the development of generic language such as that attached.

"Trader input is particularly encouraged as in some firms, the head of credit or equity trading, for example, is responsible for the decision on whether to include dispute resolution provisions in transaction documentation. It is anticipated that only one or two meetings of those sub-working groups will be held, particularly given that some institutions' representatives cover all products and it is not efficient to require attendance at multiple meetings. In addition, having trader input at the limited number of meetings these sub-working groups will engage in will ensure that the group has an indication of the level of support for this initiative and is aware of any obstacles with regard to the project."

### ISDA new draft documents

Standard Terms Supplement for Recovery Lock Transactions

Contingent Credit Default Swap Confirmation

ISDA have circulated drafts of these documents around its members for comment.

Fri 12/01/2007 19:09 ISDA Legal  
Department [sminns@isda.org]

# NOTICES

## Derivatives

### ISDA Netting and Collateral Opinion Update

#### New Netting Opinions

ISDA has commissioned netting opinions from the following two jurisdictions:

- ▶ (i) **Israel** counsel, Meitar Liquornik Geva & Leshem Brandwein, Law Offices; and
- ▶ (ii) **Anguilla** counsel, Harney Westwood & Riegels who also act as our British Virgin Island counsel.

#### Collateral Opinions

ISDA has published a new collateral opinion from **Hungarian** counsel, Allen & Overy.

#### Netting and Collateral Update Requests

Request letters for 2006 updates were sent to counsel in September. Updates are posted as ISDA receive them.

All completed opinions are available on ISDA's website at [www.isda.org](http://www.isda.org) under "Opinions".

#### Netting Legislation

ISDA's website [www.isda.org](http://www.isda.org) – "Opinions" – "Status of Netting Legislation" has an updated list of netting legislation.

# BLOG

## Current updates on banking law issues

Have you tried out the Bank Lawyers' Blog? Updated with topical information every few days.

You can discuss items of interest with fellow bank lawyers or research it for banking information.

These are some topics in the last month:

- First securitised debt case? Citibank v MBIA
- World-wide freezing order
- House of Lords' appeal reform - and no more wigs
- New money laundering regulations
- Dormant bank accounts
- Small business banking competition
- Rome 1 - "damaging" changes to contract law
- Funding leveraged acquisitions
- Financial Collateral Arrangements - an evaluation

Do try it!

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